O/Essen. Com (Reg of D&A)/52

1952.

File No. 31/52

Legal Department

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Subject:—

Opinion on the Bombay Essential Commodities (Regulations of Disposal & Acquisition) Order

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O/Essen. Com (Reg. of D&A)/52

File No. 31/52

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C O N T E N T S.

Legal Department File No. O. Essen.Com.(Reg.of D.&) of 52

Sr. No.	R.I./-	O.No.	Subject	Pages
			Opinions on the Bombay Essential Commodities(Regulation of Disposal & Acqisition (order.	
1.		G-70 13.2.52	Question regarding reissue of the Bombay Essential Commodities (Regulation of Disposal & Acquisition) order.	1-6
2.		G-263 19-5-52	Questions(1) whether 'paddy'in straw before threshing is included in the term'paddy' as used in the Schedule to the Order and(2)Whether it would be legal for the Mamlatdars to take possession of paddy instraw and get in threshed at the cost of cultivators as proposed by the Collector of Kanara.	7-10
3.		G-580 31-10-52	Question whether a set-off can be claimed against the Madanzampa Consumers' Co-operative Society, Baroda, for payment due from the Society to Govt.	11-16

R.D.
4-7-56
C.5

PMS
4/8

NMD
4/8

Office of the R.L.A.

The District Magistrate, West Khandesh, has stated in his letter dated the 16th January 1952 at page 1 ante that Government has reissued the Bombay Essential Commodities(Regulation of Disposal and Accusition) Order, because some courts in this State have held it to be ultra vires. This is not entirely correct. The order was reissued as advised in the R.L.A.'s opinion No-G-382, dated the 23rd August 1951. The R.L.A. held that the amendment of section 3(3) of the Essential Supplies (Temporary Powers) Act,1946 has put beyond all doubt that an order made made under section 3(1) may confer powers and impose duties on officers of the State Government and may contain directions to such officers as to the exercise of such powers or to the discharge of any such duities but it was not strictly necessary to reissue all such old orders as the powers were conferred and duties were imposed on subordinate officers by these orders for adminstrative convenience. It was considered desireable to reissue the Bombay Essential Commodities (Regulation of Disposal and Acquisition) Order, in view of the decision in Fakir Mohamad Vs. King I.L.R. 1949 Cut 627 and not in view of the judgments of some of our subordinate courts. However is stated by the R.L.A. in him opinion No. G- 273, dated the 8th August 1950, in this order only certain executive functions were assigned to subordinate officers and it would therefore be advisable to take a case strong on facts to the High Court for an authoritative decision rather than to withdraw all cases for breach of that order.

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Remembrancer of Legal Affairs.

M.R.D.
24-7-56
C.4

U.R. to C.S.D. No.G- 70,dated the 13th February 1952.

Office of the R.L.A.

The questions for R.L.A.'s consideration are as follow:- (1) Whether 'paddy' in straw before threshing is included in the term 'paddy' as used in the schedule to the Bombay Essential Commodities (Regulation of Disposal and Acquisition) Order,1951; and(2)Whether it would be legal for the Mamlatdars to take possession of paddy instraw and get it threshed at the cost of cultigators as proposed by the Collector of Kanara in his letter at page 1.

The word'paddy' has been defined in the Oxford Dictionary to mean 'Rice in the straw or in the husk'. The term'paddy' as used in the schedule of the Bombay Essential Commodities (Regulation of Disposal and Acquisition) order, 1951 would therefore, include paddy in straw also. The District Magistrat can issue a notice to a cultivator under clause 5 of that order directing him to sell the stock of paddy in straw and if the cultivator fails to comply with the notice, the District Magistrate or any person authorised by him may enter upon the land and take possession of the stock in respect of which the notife was given and sell such stock to the person specified in the notice. For purposes of such sale a price for paddy in straw may be spcified taking due account of the costof threshing. The specified person who may be either a godwan keeper or any other Government officer may then thresh the paddy and pay the price fixed for the sale.

The proposal of the Collector of Kanara that the Mamlatdar and Mahalkaries should be authorised to thresh the paddy laying with the cultivator at the cost of the cultigator and then requisition the surplus over and above his requirements for personal cunsumption is not legally feasible.

If cultivators are to be directed to thresh paddy before a particular date and if they fail to do so, then if Government officers are to be authorised to thresh it at the cost of cultivatiors in order to ascertain the surplus remaining with the cultigators which Government may requisition, an order to that effect will have to be mddeunder section 3 of the Essential

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section 3 of the Essential Supplies(Temporary ~~Temeirary~~-Powers) Act, 1946. No action as proposed by the Collector seems possible under any of the existing order.

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U.R. to C.S.D., No-C- 263 ~~2968~~, dated the 19th June 1952.

M.R.D.
24-7-56
C.4

Office of the R.L.A.

Sub-clause(4) of clause 5 of the Bombay Essential Commodities(Regulation of Disposal and Acquisition) Order,1951 provides that the sale proceeds of any sale carried under provision of sub-clause(3) shall, after deducting the cost of the sale, be paid to the person from whom stocks were seized or if he is being prosecuted for any contravention of this Order, be deposited in any Court. Payment of price of the foodgrains is statutory in this case and it would be a breach of the provisions of this clause if payment is notmade. Under Order 8 Rule 6 of the Civil Procedure Code a set off can be claimed if both the parties fill the same character in respect of the amount to be set off as they fill in respect of the amount against which set off is claimed. In this case the parties fill the same character in both the transactions as moneys are to be adjusted for goods supplied by Government to the Society before merger against money for goods re-sold by the Society to Government after merger. Even though the second payment is statutory, it seems that there is no objection to such a set off.

If the Society files a suit for the price of the goods Government can claim a set off in respect of the amount due for the price of goods supplied by Government to the Society.

Sd/- 31-10

Remembrancer of Legal Affairs.

M.R.D. 24-7-56 C.4 U.R. to C. of R., No.G- 530,dated the 31st October 1952.